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AMSEL-LG

POINT PAPER

1 NOVEMBER 2002

SUBJECT: The Status of Contractors on the Battlefield

PURPOSE: To summarize the rules and regulations concerning the use of contractors on the battlefield.

FACTS:

- The contract establishes the responsibilities of the Government and the support contractor with respect to the use of contractors on the battlefield. Every effort should be made, therefore, to specifically incorporate the respective duties of the two parties from the outset of that agreement. AMC has issued AMC-P 715-18 'Contracts and Contractors Supporting Military Operations'. This pamphlet seeks to integrate operations and contracting for support of operations. Included at Appendix C of the pamphlet is a compilation of suggested contract special requirements. Specific contractual areas that should be addressed include: pay, accounting for personnel, logistics, risk assessment and mitigation, force protection, legal assistance, central processing and departure point, identification cards, medical coverage, clothing and equipment, weapons and training, vehicle and equipment operation, passports/visas and customs, staging, living under field conditions, morale, Status of Forces Agreement, tour of duty, health and life insurance, management and next-of-kin notification.
- Contractor employees are expected to adhere to all guidance and obey all instructions and general orders issued by the theater commander or his/her representatives. In the event the instructions/orders are not followed, the commander may limit access to facilities and/or revoke any special status that a contractor employee has as an individual accompanying the force. The contracting officer may direct the contractor to remove offending employees. Field Manual 100-21 'Contractors on the Battlefield' addresses the use of contractors as an added resource for the commander to consider when planning support for an operation. The manual's purpose is to define the roles of contractors, describe their relationship to the combat commanders and describe the contractor's mission, i.e., augmenting operations and weapon systems support. The field manual emphasizes that the field commander does not have

the same authority over contractors that he/she has over military personnel and Department of the Army civilian personnel. “The terms and conditions of the contract establish the relationship between the military (US Government) and the contractor; this relationship does not extend through the contractor supervisor to his employees. Only the contractor directly supervises its personnel. The military chain of command exercises management control through the contract.”

- On the issue of removing contractors from the battlefield, Chapter 6 of Field Manual 100-21 sets forth the commander’s responsibility to provide force protection commensurate with that provided to Department of the Army civilian personnel and delineates specific levels of force protection to be provided to contractors on the battlefield based upon the existing threat level. For example, in a HIGH-level threat scenario, the manual outlines minimum measures that the commander should implement. These measures include: issuing contractors protective equipment; transporting contractor personnel in protective vehicles; placing contractors in protected areas; removing all but essential contractors from the theater of operations and providing military assistance and/or replacements, if possible. This guidance is in keeping with the general policy on the use of support contractors on the battlefield, which is set out in AR 715-9, ‘Contractors Accompanying the Force’. This regulation sets out, as general guidance, the standard that contractors should be assigned duties at the echelon above division level recognizing that contractors could be deployed elsewhere as needed, consistent with the terms of the contract and the tactical situation. On 11 June 2002, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) issued a memorandum, Subject: Contractor Support Restrictions, which specifically recommended that Product Managers “should strive to develop systems that do not require the routine assignment of contractor personnel in the ground maneuver area forward of the Division Rear.... or Intermediate Staging Base...”
- Should a contractor refuse to go where requested, the remedies (termination for default, etc.) for the failure of the contractor to perform under the terms of a support contract are the same as those presently available under other Government contracts. These remedies will not provide the commander in the field with immediate solutions to the problems that arise from the lack of the required contractor support. A West Group Briefing Paper (No. 02-7, June 2002, Subject: Contractors on the Battlefield: Emerging Issues for Contractor Support in Combat & Contingency Operations) states that the Government should have alternatives in place in the event of non-performance. “The prospect of contractor personnel discontinuing performance of their contractual duties to avoid a potentially life-threatening situation may provide an important incentive for military commanders to ensure that contractor

personnel provide military personnel with supplementary training in advance of hostilities. The goal of such training would be to ensure that military personnel have at least some familiarity with how to perform key contractor tasks in the event that contractor personnel are unwilling or unable to continue performance.”

- As a general rule, the UCMJ does not cover contractor personnel although court-martial jurisdiction may be expanded to cover contractors in time of war. The Military Extraterritorial Jurisdiction Act of 2000 does provide for federal jurisdiction over crimes committed outside of the United States. This jurisdiction covers members of and persons employed by or accompanying the Armed Forces. The Act allows the Secretary of Defense, under specified conditions, to authorize DOD law enforcement personnel to arrest suspected offenders outside the United States involved with crimes punishable by imprisonment of more than one year.

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